

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

BRYAN LEE BREWER, #71691-018,

Petitioner,

v.

ACTION NO. 2:20cv605

ACTING WARDEN WILSON (formerly
Warden Andrews),¹

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. Petitioner Bryan A. Brewer, a federal prisoner convicted and sentenced in the Middle District of Florida and housed in the Federal Correctional Institution in Petersburg, Virginia, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his Bureau of Prisons “(“BOP”) custody score. *Id.* at 2, 8.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern

¹ Respondent acknowledges that Acting Warden Wilson is the proper Respondent in this action, as Petitioner asserts, because Warden Andrews is no longer the current Warden at FCI Petersburg. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (the “default rule is that the proper respondent is the warden of the facility where the prisoner is being held”). ECF No. 56.

District of Virginia. The Magistrate Judge's Report and Recommendation recommends granting Respondent's Motion to Dismiss (ECF No. 19), denying Petitioner's motions for summary judgment (ECF Nos. 9, 12, 18, 37), and denying and dismissing without prejudice the petition for writ of habeas corpus (ECF No. 1). Mr. Brewer filed objections to the Report and Recommendation, and Respondent filed a response to the objections. ECF Nos. 47, 48.

The Court has reviewed the record and examined Mr. Brewer's objections to the Report and Recommendation, and has made *de novo* findings with respect to the portions to which objections were made. The Court accepts the findings and recommendations set forth in the Report and Recommendation, and it is **ORDERED** that Respondent's Motion to Dismiss (ECF No. 19) is **GRANTED**; Petitioner's Motions for Summary Judgment (ECF Nos. 9, 12, 18, 37) are **DENIED**; and the petition for writ of habeas corpus (ECF No. 1) is **DENIED and DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that Judgment be entered in favor of Respondent.

Mr. Brewer's request for an evidentiary hearing (ECF No. 47, at 3), and Motion for an Injunction (ECF No. 49), are **DENIED** because the Court lacks subject matter jurisdiction to address any possible merits to his claim. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Similarly, Mr. Brewer's Motion for "Relief and Sanctions" (ECF No. 54) must be denied because of a lack of subject matter jurisdiction, and because Petitioner has failed to demonstrate that any claims of retaliation or other alleged

bases for relief were raised properly or properly exhausted through the BOP's administrative remedy program.

Mr. Brewer has failed to demonstrate “a substantial showing of the denial of a constitutional right,” and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 327, 335–36 (2003).

Mr. Brewer is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Ct. 11(a). **If Mr. Brewer intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Mr. Brewer may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.** The Clerk shall please forward a copy of this Final Order to Mr. Brewer and counsel of record for Respondent.

/s/

Arenda L. Wright Allen
United States District Judge

September 10, 2021
Norfolk, Virginia